

## Comparative Case Study 6

# The experience of election observers: lessons for the process of timber verification

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### Introduction

This paper discusses the experience of election observation in relation to the issue of timber verification. As is the case with independent monitors in the timber sector, the role of election observers is to alleviate doubts over the functioning of a routine process. They check on the veracity of claims, to improve the performance of the managing institutions and the overall governance system, and increase the legitimacy of the operations under review. This paper is ordered around three key questions raised by the timber verification debate, namely:

- How to ensure ownership over the system and the standards used;
- How to guarantee independence; and
- How to ensure that attention to only one aspect of governance (elections) has a positive impact on the wider systems of democratic governance?

### What is election observation?

Election observation involves the purposeful gathering of information about an electoral process and the making of informed judgement in terms of the fairness of the election process (IDEA, 1997 and Bjornlund, 2004). Box 1 explains the terminology of election observation. It is not a universal practise but is introduced where there is some suspicion that an established election process is not likely to be free and fair. Thus, like the verification of legality of the timber trade, election observation is a response to an extra element of doubt about the functioning of a more routine process.

There are parallels between the two. As is the case with independent monitors in the timber sector, election observers seek to:

- Provide a check on the veracity of claims;
- Improve the performance of the managing institutions and the overall governance system; and
- Increase the legitimacy of the operations under review.
- What technologies are involved?

An important distinction exists, in operational terms, between international and domestic observers. Much of the discussion on election observation is centred on the debate around the relative merits of international versus domestic observers. The presence of international observers is held to be important, primarily because of their ability to bring international legitimacy, their capacity to bring irregularities to the attention of authorities, their perceived neutrality from local politics, and their relative protection from intimidation. The presence of international observers can also improve the credibility of the election process by deterring fraud (Nevitte and Canton, 1997). The ability of international observers to detect fraud may well be limited (Carothers, 1998: 19) but their deterrent effect can be substantial.

### Box 1: Terminology compared

The International Institute for Democracy and Electoral Assistance (IDEA, 1997), identifies five separate activities which are associated with the term election 'observation'.

- Mediation - a form of third-party intervention in disputes, directed at assisting disputants to find a mutually acceptable settlement.
- Technical - technical support to the electoral process.
- Supervision - the process of certifying the validity of all or some of the steps in an election process.
- Monitoring - the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored.
- Observation - the gathering of information and making informed judgements from that information.

Pastor (1998) and others make a clearer distinction between 'election monitoring' and 'election observation', arguing that monitoring is a more comprehensive, deliberate and systematic process and does not include the implementation aspects of IDEA's definition.



## Ownership

As there is often scepticism over the motives of those pushing for election observation, national 'ownership' tends to figure strongly in the discourse around the process.

Fundamental principles for ownership over the election observation process nowadays include:

- The recognition and respect (by the election observer) of the sovereignty of host government (IDEA, 2000);
- Respect for the election management body (IDEA, 2000);
- An official invitation from the host government (IDEA, 1997:14) and an agreement on reporting and response mechanisms;
- The consent of all political parties e.g. The Council of Freely Elected Heads of Government will never formally observe if they are not welcomed by all the main players (Chand, 1998: 546); and
- Agreement with the host country that the election observer might terminate the effort if agreed milestones are not fulfilled (IDEA, 1997:14).

## Respecting sovereignty

As with independent forest monitoring, election observation relates to the action of sovereign states. International election observation requires particularly careful handling, as it is vulnerable to the accusation that it violates the sovereignty of the state. Some authors would see the rise of election observation by outside actors to defend democracy as an erosion of state sovereignty (Chand, 1998: 546). Others believe that international mediators have the right to intervene in support of a universal right of democracy.

There is no international legal instrument that could underwrite the principle of election observation. In 1991, the UN General Assembly called on the UN Secretary General to create an Electoral Assistance Unit to 'ensure consistency in the handling of requests of member states in organising elections'. However, beyond this, the legitimate role of the international community with regard to national democracy has never been clearly defined (Pastor, 1999b:123).

There remains a conflict between the UN Charter (Article 2 [7]) which prohibits 'any interference in matters which are essentially within the domestic jurisdiction of any state', and International Human Rights law which established free elections as a universal human right. According to the UN Charter, national elections are a domestic matter and are accompanied both by the 'right to have a democratic government' and the 'right of the state to be free of outside intervention'. Thus, election observation must be carried out under national legislation and the negotiation of the terms of the election observation lies with the host government (Inter-parliamentary Union, 1994: 1-3; Kaiser, 1999:32).

## Understanding the objectives of election observation

Governments request election observers for a variety of reasons. In some cases the incumbent accepts international observers to ensure a good national and international reputation. Others are compelled by aid donor conditionalities (Pastor, 1999b: 129). Keohane and Nye (1998: 86) distinguish between 'hard power' the ability to get others to do something they would

not ordinarily do through threats and rewards, and 'soft power' 'the ability to get desired outcomes because others want what you want'. Either, or both, forms of power might figure in the acceptance by a government of international observation of its election processes.

Election observation is introduced where there is suspicion that elections might not be free and fair. Typically, this includes situations where there has been conflict, or where there is a transitional election, and/or where the political system is at an early stage of development.

## Ambiguity of standards

International norms surrounding democracy are strong and these have helped to give legitimacy to international election observation efforts. Pastor (1999b: 123), in his discussion of the international election observers as a dimension of accountability, stresses the way in which 'democracy is the right of all people' and thus 'people must have the unfettered right to elect their leaders'. The act of election observation has itself helped to advance the principle that holding genuine competitive elections on a regular basis is an international norm (Carothers, 1997). However, beyond these norms, judgement on what is 'free and fair' remains ambiguous (Carothers, 1997:24).

Bjornlund (2004) concludes that it is impossible to develop a list of international norms for democratically satisfactory and legitimate elections that can easily be translated into practical standards for assessing elections. Electoral law is not associated with fixed, universal standards, and the complexity of the electoral process makes the idea of any simple formula unrealistic (Elkit and Svensson, 1997: 43). Best practice does exist and clearly if an election meets nearly all of the suggested criteria it can be said to be 'free and fair' and if it fails to meet nearly all of them it can be said to be not. However, the reality is that in many election situations the process falls somewhere in between.

In response to the challenges associated with the development of universal standards many authors stress the need to focus on the professionalism and expertise of the observers.

## Independence

One of the most crucial grounds for bestowing acceptance and ownership on the observation activity is the positive perception of the election observers by stakeholders in the country concerned (IDEA, 1997). Independence and credibility are fundamental requirements: they are associated with neutrality, non-partisan attitudes on the part of the observers and even-handed methods including reporting techniques (Nevitte and Canton, 1997).

## Criteria for observers

The purpose of the election observers is to confer, or to deny, legitimacy on the electoral process and this legitimacy will be undermined if the election observers are seen to be committed to a particular outcome. They therefore need to be neutral and to refrain from participating in any function or activity that could lead to a perceived conflict of interest. Other recommended characteristics (IDEA, 2000: 25) include:

- Eminence in the law, government or an election-related field;

- Independence from the government;
- Proven knowledge of the procedures and system;
- Ability to use judgement and discretion in politically sensitive environments; and
- Knowledge of the language and the country.

Some commentators on the election-observer process note that the sporadic and short-term nature of many international-observer processes restricts their usefulness. Observers often arrive too late and leave too early. Follow-up is poor and there may be an overemphasis on the 'election day' to the detriment of the events and processes leading up to the election. Assessment of the effectiveness of an election process clearly requires an evaluation of the entire election process, not just the conduct of the vote (Pastor, 1999b: 129).

Disproportionate attention given to the election day can lead to an over-favourable assessment (Carothers, 1997:22). For a fair judgement there is also a need to look at other issues such as the passage of laws, the registration of parties and candidates, the preparation of the voter list, media coverage, the adjudications of complaints lodged against the electoral commission and financing of the campaigns. For example, in the case of the 1994 election in Mexico, the PRI incumbent party had a huge advantage of media access and financial reserves though opinions are divided on the effects of these advantages on the election outcome (Chand, 1998:558).

One of the fundamental requirements for an election observer is the ability to distinguish between irregularities that are the consequence of low administrative capacity and those that are the expressed outcome of political intent (Pastor, 1999a: 75). All too often, when technical problems occur in weak or transitional countries they are assumed by many to be politically inspired. Pastor (1999a: 78) suggests that in countries with little or no experience of administering and conducting elections there is a strong likelihood of errors, regardless of malign intent.

### Reporting and sanctions

The credibility of the process depends not only on the status of the observer but also on the methods and data used. The use of a recognised methodology increases transparency and trust. Such methods include:

- The identification of information sources;
- The identification of the sampling basis used;
- The degree of uncertainty associated with the statistical handling of the data;
- A statement of all assumptions underpinning the analysis of the data; and
- The inclusion of evidence to support all judgements.

Reporting of results and clear enunciation of assumptions and judgments are key aspects. Best practice advises that reports should be supplied to the electoral commission and great care taken when any public statements are released by the observer (IDEA, 2000). In most cases, reports are released directly to the public or to the media and not vetted first by the electoral commission.

The options open to observers who do detect deficiencies are limited. Observers are often not well-placed to criticise a government they have given them access to the election process or with whom they are in a dependent financial relationship. The actions that can be taken might also be well beyond the control of the

observers (IDEA, 1997:11). Equally, consideration has to be given to the fact that elections are often highly charged politically, and this may discourage the observer from making any statement that might precipitate violence or be so construed (Carothers, 1997:25).

### Questions of impact

International observers bring manifest independence to election processes, but at what cost to national political dynamics? Is international observation compatible with national capacity building? Domestic observers are often stated to be less independent than international observers. Pastor (1998) goes so far as to claim that in his observations of 20 electoral processes in 15 countries, he has never seen a non-partisan domestic observer group that has had the trust of all parties.

On the other hand, international observation tends to be a transitory phenomenon, while national observation has the potential to become more embedded within the political fabric of the society. National groups, and those who are able to broaden their approach outside of immediate election periods, may have more to offer in terms of capacity building and strengthening of systems and institutions. There is an argument that these groups are stifled by an over-emphasis on international observers, and that foreign organisations may thwart the development of domestic institutions that have not yet established their competency or autonomy (Pastor, 1999b: 123; IDEA, 1997:25).

At the same time, cooperation with domestic observers can greatly increase effectiveness and the information to which international observers have access. Equally, capacity building by international observers could help to stimulate a culture of democracy (Child, 2005). A rather bigger question relates to the value of international observation as one component of the democratic process (election observation and possibly election fraud) in stimulating broader governance reform. How important is tackling this one, possibly minor, issue in the wider picture of democratic governance?

This discussion raises the important question of the role of elections as an indicator of a healthy democracy. As with the timber verification debate, there are those who would argue that such external intervention may be good at exposing problems but that this does not necessarily lead to constructive change in the arena of democratic governance (Pastor, 1999, Bjornlund, 2004). Others argue that international election observation has contributed to the strengthening of basic standards of election administrators and has helped the growth of political parties and to provide a nucleus for organised civil society. In this view, the presence of election observers stimulated the effective functioning of other important institutions such as an independent election commission; an accurate voter registration list, human rights ombudsmen, the opening of official media, and increased transparency in party finances (Chand, 1998: 550; Carothers, 1997:20).

### The potential for a positive judgement

The motivations for many governments in requesting observers to observe their elections is to gain legitimacy. The very fact that the election observation is taking place may be viewed by some as sufficient evidence of that legitimacy, regardless of the outcome of the election itself.



## Box 2: Recommended issues for pre-assessment and preconditions for engagement (IDEA, 1997)

The issues to consider in making initial assessment include:

- The existence of basic rights;
- Constitution and laws;
- The credibility, independence and competence of the electoral observers' authority; and
- Any evidence of abuse of incumbency.

Election observers also need assurance of guarantee of certain rights such as the right to:

- Pursue observation unhindered;
- Visit any polling station;
- Obtain information on the process from any level of the electoral administration;
- Have access to all documents relating to the electoral process;
- Get information to complaints lodger;

This creates a risk that international observers will be used for purely cosmetic reasons. Carothers (1997:22) and Chand (1998:557) raise concerns that election observation can unwittingly abet fraud. Should controversial electoral processes be supported in the hope of bringing about a transition or is refusing the invitation to 'observe' and legitimise the election the more proper response (Kaiser, 1999:43)?

It is for this reason that best practice (see, for example, IDEA, 1997 and IDEA, 2000) recommends that a pre-assessment mission is carried out (Box 2). 'Whether or not to become involved in the election should be contingent on whether or not the electoral environment is acceptable and whether prior information suggest that that standards

will be reached' (IDEA, 1997: 14). This requires that all parties should operate in an environment that does not discriminate against any one of them.

## Conclusion

Election observation has many resonances with that of timber verification. Common themes include the promotion of ownership and independence in a context of state sovereignty, and the implications of the activity for the promotion of a broader concept of good governance. Whether election observation can be a significant lever for governance reforms or it is too simple an indicator to have an impact on the overall quality of governance is debateable. In robust democracies, the role of election observers and monitors is played by well-embedded national institutions - independent electoral commissions, non-partisan poll watchers, the press and independent courts. Thus, the question is raised as to whether efforts and resources are better used in developing these other horizontal institutions of democracy rather than on election observation, which is just one part of the process?

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